IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 3127 of 2012

Date of decision: 27.9.2012

Bipan Modi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR.JUSTICE R.P. NAGRATH

PRESENT: Mr. Balram Singh, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

SURYA KANT, J. (ORAL)

The petitioner is aggrieved by the order dated 5.9.2011 (Annexure P-3) of the State Information Commission, Punjab, upholding orders passed by the Public Information Officer of the Police Department, declining information to the petitioner comprising list of selected candidates for appointment to the posts of Inspector, Assistant Sub Inspector and Constable selected in Sports Category (General Duty) pursuant to an advertisement issued on 9.11.1990. The information was declined and the said order has been upheld by the State Information Commission on the plea that the Punjab Armed Police (PAP) is one of the 'exempted' Departments under the Right to Information Act, 2005 (for

short 'the Act'). Reliance has been placed on the Punjab Government notification dated 23.2.2006, relevant part whereof reads as follows:

> " No.2/27/05-1AR191 in exercise of the powers conferred by Sub Section (4) of Section 24 of the Right to Information Act, 2005 (Central Act No. 22 of 2005) and all other powers enabling him in his behalf the Governor of Punjab is pleased to notify that the said Act shall not apply to the following organizations under the Department of Home Affairs and Justice namely:-
>
> 1. Intelligence Wing.
> 2. Armed Police including Armed Battalion of PAP.
> 3. Commando and IRB
> 4. Security Wing
> 5. District Police and GRP in relation to the following:-
>
> XXX XXX XXX XXX"

The question that arises for our consideration is whether the information pertaining to selection or appointments made against public posts in the Police Department i.e. PAP can be out of purview of the Act?

In our considered view, the selection process or consequential appointment to a public/civil post has to be tested and is always referable to Article 16 of the Constitution which guarantees equality in the matter of public employment. A person alleging

inequality, discrimination or the selection to such posts for the reasons other than merit, will not be able to get the desired relief or substantiate his allegations unless the selected candidates are impleaded or the relevant material is placed on record. The denial of information to such an aggrieved person tantamounts to denying him his fundamental right to prove discrimination or arbitrariness in public employment. This would necessarily be an infringement of Article 16 of the Constitution.

The object of granting exemption to police or allied departments vide the above reproduced notification is to protect the confidential, sensitive informations pertaining to the intelligence or Security Organizations in accordance with Section 24 (4) of the Act. The notification dated 23.2.2006 (Annexure P-2) issued by the Government of Punjab has to be construed in the context of object sought to be achieved by Section 24 (4) of the Act which in no certain terms further provides that “information pertaining to the allegations of corruption and Human Rights violations shall not be excluded under this sub-section”. If there were selections based upon considerations other than merits, will it not amount to a kind of 'corruption' in the matter of public employment?

Consequently, we hold that the notification dated 23.2.2006 (Annexure P-2) is inapplicable and cannot be extended to withhold the information pertaining to recruitment in public employment in Police Department.

For the reasons aforestated, the writ petition is allowed. The impugned order passed by the State Information Commission or the Public Information Officer of the Department are set aside with a

direction to respondents No. 3 and 4 to provide the requisite information to the petitioner subject to other requisite conditions as per the Act. However, in view of the interpretation given above, we decline the prayer to quash the notification dated 23.2.2006.

(SURYA KANT)
JUDGE

September 27, 2012 **(R.P. NAGRATH)**
rishu **JUDGE**